Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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In the Matter of)	
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CMRS Market Competition)	WT Docket No. 07-71
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SPRINT NEXTEL CORPORATION COMMENTS

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EXECUTIVE SUMMARY

Sprint Nextel's comments address a regional Bell Operating Company ("RBOC") practice that harms consumers within the market for Commercial Mobile Radio Services ("CMRS") and that inhibits competition within the larger intermodal market for telecommunications and broadband information services – the practice of harming competition by imposing unreasonable costs on competitors.

The RBOCs are able to impose costs on Sprint Nextel by using their monopoly power over bottleneck facilities that are essential inputs to the provision of CMRS. Specifically, the RBOCs impose significant costs on their competitors by overcharging for dedicated transport facilities, otherwise known as "special access." That AT&T and Verizon possess monopoly power for the vast majority of cell site "back haul" facilities is confirmed by the high prices and obscene profits they are making on special access circuits. Moreover, evidence filed with the Commission demonstrates that RBOCs often charge higher prices in those markets deemed "competitive" and where as a result, they have been given the right to charge prices at will.

AT&T's and Verizon's exploitation of market power harms consumers by needlessly increasing the cost of providing wireless services. This exercise of market power also retards intermodal competition, including the provision of wireless broadband services that will compete with AT&T's and Verizon's landline broadband services, because they are effectively able to set a price floor for the provision of wireless services – thereby protecting their own landline broadband services from more intense competition from wireless alternatives.

A more recent indicator of AT&T's and Verizon's ability to negatively impact the competitiveness of the CMRS marketplace is AT&T's new "corporate policy" to increase other wireless carriers' cost of call termination. Historically, CMRS providers have interconnected directly when traffic volumes make direct interconnection more cost effective than indirect interconnection (*via* an RBOC tandem switch). However, Cingular recently advised Sprint Nextel of a new AT&T "corporate policy" whereby Sprint Nextel will no longer be permitted to interconnect directly with it under specified circumstances, but rather must instead begin sending traffic destined to Cingular *via* AT&T tandem switches – in effect, introducing a new bottleneck. AT&T's new corporate policy is clearly anticompetitive, both in purpose and in effect. The policy is designed to generate new revenue for itself while increasing the service costs of its rivals.

Sprint Nextel respectfully requests that the Commission consider in its next CMRS competition report the market power possessed by AT&T and Verizon and how the exercise of that power is harming consumers within the market for commercial mobile radio services and inhibiting competition within the larger intermodal market for telecommunications and broadband information services.

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SPRINT NEXTEL COMMENTS

Sprint Nextel Corporation ("Sprint Nextel") submits these comments in response to the invitation of the Federal Communications Commission ("FCC" or "Commission") to address topics of relevance to its "review and analysis of the provision of [wireless] service and competitive market conditions." Sprint Nextel below addresses one of the most important issues facing the wireless industry today: AT&T Corporation's ("AT&T") and Verizon Communications' ("Verizon") use of monopoly power over essential production inputs to the provision of Commercial Mobile Radio Services ("CMRS") – that is, special access services.

This exploitation of market power harms consumers because the cost of providing wireless services is needlessly increased, as the two remaining large incumbent local exchange carriers ("ILECs")/Regional Bell Operating Companies ("RBOCs") reap monopoly profits from their
bottleneck facilities. This exercise of market power also retards intermodal competition, including the provision of wireless broadband services that will compete with AT&T's and Verizon's
landline broadband services, because the RBOCs are effectively able to set a price floor for the
provision of wireless services – thereby protecting their own landline broadband services from
more intense competition from wireless alternatives.

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See Public Notice, WTB Seeks Comment on CMRS Market Competition, WT Docket No. 07-71, DA 07-1652, at 1 (April 6, 2007).

The Commission has previously recognized that "all incumbent LECs have the incentive and ability to discriminate against unaffiliated broadband CMRS providers":

LECs that own CMRS subsidiaries have the incentive to engage in such anticompetitive practices in order to benefit their own CMRS subsidiaries and to protect their local exchange monopolies from wireless competition. At the same time, LEC control of bottleneck local exchange facilities – upon which competing CMRS providers must rely – gives LECs the opportunity to engage in anticompetitive behavior.²

The Commission has observed that the ILEC incentive to engage in anticompetitive practices increases as they perceive CMRS providers becoming a direct competitor to their landline services.³ These anticompetitive practices, the Commission has recognized, pose "a substantial threat to full and fair competition in the CMRS marketplace." But as demonstrated below, these practices also retard the development of robust intermodal competition.

While all incumbent LECs possess the incentive and ability to discriminate against unaffiliated wireless carriers, it is the two largest ILECs (and, coincidentally, the two largest CMRS carriers) that have the biggest impact on consumers. AT&T and Verizon collectively control more than 76 percent of all ILEC access lines.⁵ The special access market is a \$16 billion market,⁶ and AT&T and Verizon collectively receive over 81 percent of all ILEC special access revenues.⁷ And, through their ownership of Cingular and Verizon Wireless, AT&T and Verizon

² LEC-CMRS Safeguards Order, 12 FCC Rcd 15668, 15689 ¶ 27, 15696 ¶ 45 (1997), aff'd GTE v. FCC, 233 F.3d 341 (D.C. Cir. 2000).

³ See, e.g., id. at 15670 ¶ 1, 15692 ¶¶ 36-37, 15701 ¶ 52.

⁴ *Id.* at \P 37.

⁵ See FCC Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service*, Table 7.3 (Feb. 2007).

See Government Accountability Office, FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services, Report 07-80, at 1 (Nov. 2006)("GAO Report 07-80").

⁷ See FCC ARMIS 43-01, 2006 Report.

collectively serve 52 percent of all wireless customers.⁸ Given their massive size, AT&T's and Verizon's practices relative to CMRS providers can have an enormous impact on all wireless customers (including customers of their own CMRS affiliates).⁹

The Commission has noted that incumbent LECs have a variety of tools at their disposal to effectuate anticompetitive practices, including improper cost allocation, discriminatory interconnection practices, and price squeezes. ¹⁰ Sprint Nextel in these brief comments focuses on two examples of RBOC misuse of their monopoly power. ¹¹ These are by no means the only situations where RBOCs adversely affect wireless service costs and as a result, adversely affect competition in the market. ¹²

A. AT&T and Verizon are engaged in monopoly pricing of essential dedicated transport facilities needed for the provision of wireless services. A wireless carrier like Sprint Nextel can provide its services only if it can connect its cell sites to its switches (or routers

⁸ See Eleventh Annual CMRS Competition Report, 21 FCC Rcd 1094, Table 4 (2006).

Sprint Nextel assumes that AT&T and Verizon are booking their CMRS affiliates the same prices they charge independent wireless carriers, although there is a big difference between a mere cost accounting entry and the actual payment of cash by non-affiliates. Within an integrated firm, it makes no difference whether costs and profits are booked to the ILEC or CMRS affiliate, and it makes no difference whether the affiliate is paying below-cost prices or well-above-cost prices because the money is merely moving from "one pocket to the other." In fact, integrated firms benefit by overcharging all CMRS carriers for essential inputs because they can maximize their corporate profits while concurrently increasing their competitors' cost of service.

See LEC-CMRS Safeguards Order, 12 FCC Rcd at 15689 ¶¶ 28-30.

These comments are limited to examples of RBOC misuse of their market power relative to CMRS. As the FCC is aware, the RBOCs often use the same bottleneck facilities in exercising market power over unaffiliated interexchange carriers ("IXCs"), competitive LECs, and larger businesses that operate their own networks.

For example, the RBOCs also possess market power in the provision of transit, which wireless and other carriers need to send traffic to other networks when traffic volumes do not cost justify use of direct interconnection. The RBOCs claim they are free to price this essential input at will and that they are not constrained by the statutory requirement that incumbent LEC rates for network elements be "based on cost." *See* 47 U.S.C. § 252(d)(1)(A)(i). Similarly, AT&T and Verizon impose grossly excessive switched access fees (interstate and intrastate) in terminating interMTA mobile-to-land traffic on their networks, but pay nothing to wireless providers for terminating their interMTA land-to-mobile traffic.

for data and Internet traffic). In many markets, Sprint Nextel has 500 or more cell sites that are disbursed throughout the market, because customers expect service regardless of where they may travel (*e.g.*, the urban core, suburban areas, rural areas). The ability of wireless carriers to connect their cell sites with their switches is, as the Commission has recognized, a "critical input." Simply put, CMRS providers would be unable to provide any of their services without access to these dedicated transport facilities.

Evidence already submitted to the Commission demonstrates that wireless carriers have no choice but to use the dedicated transport facilities offered by incumbent LECs, which ILECs call "special access." For example, AT&T Wireless has stated that CMRS carriers have "no choice" but to rely on ILEC special access, pointing out that "more than ninety percent ("90%") of its transport costs go to paying ILECs for special access." T-Mobile presented evidence showing that "more than 96%" of the DS1 back haul facilities to its cell sites are purchased from ILECs. Nextel presented evidence showing that "only about 3%" of its cell-site DS1 circuits are purchased from competitive suppliers. Nextel further demonstrated that this lack of competitive alternatives is not confined to out-of-the-way areas. In the New York MSA, for instance, the responses to a request for bids (sent to 13 competitive LECs) indicated that competitive alternatives were available at only 43 out of Nextel's over 1,500 cell-sites. 18

See, e.g., AT&T/BellSouth Merger Order, WC Docket No. 06-74, FCC 06-189, at \P 27 (Dec. 29. 2006).

¹⁴ See AT&T Wireless Comments, RM No. 10593, at 2-3 (Dec. 2, 2002).

See infra note 20 for a description of "back haul."

¹⁶ See T-Mobile Comments, WC Docket No. 05-25, at 7-8 (June 13, 2005).

See Nextel Reply Comments, WC Docket No. 05-25, at 6 (July 29, 2005).

¹⁸ *See id.* at 17.

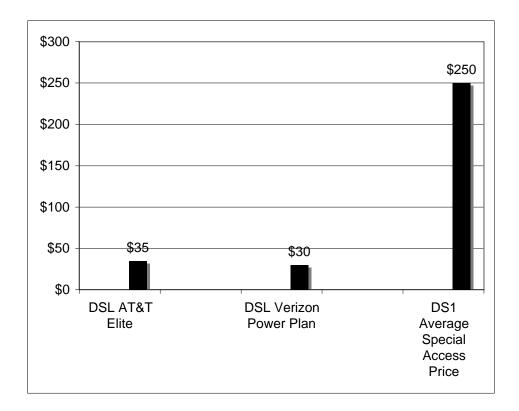
Sprint Nextel conducted in July 2006 a comprehensive survey of alternative access vendors to identify the availability of alternatives to ILEC facilities at its cell-sites. Survey respondents identified facilities at less than one percent (1%) of its cell-sites (77 alternative vendors surveyed, alternative facilities present at 184 out of 57,478 cell-sites). The facts are undeniable: AT&T and Verizon possess monopoly power in the overwhelming majority of the locations in their territories where wireless carriers must install their cell sites. These RBOCs enjoy this power solely because they were able to build ubiquitous networks during the monopoly era, and this ubiquity, the Commission has recognized, gives RBOCs "significant economies of scale and scope."

That AT&T and Verizon possess monopoly power for the overwhelming majority of cell site "back haul" facilities is confirmed by comparing the prices they charge for special access to the prices they charge their retail customers for DSL service, even though the two services involve use of the same type of circuit:²⁰

Special Access Rates for Price Cap LECs NPRM, 20 FCC Rcd 1994, 2004 ¶ 26 (2005).

Most cell site "backhaul" facilities have two components: the "tail" circuits connecting a cell site to an ILEC serving wire center (and these circuits are ordinarily purchased in DS1 increments, which is basically a single loop); and the "interoffice" facilities that connect the ILEC's serving wire center with the wireless carrier's serving switches (and these circuits ordinarily use DS3 or larger facilities because they combine traffic from multiple cell sites).

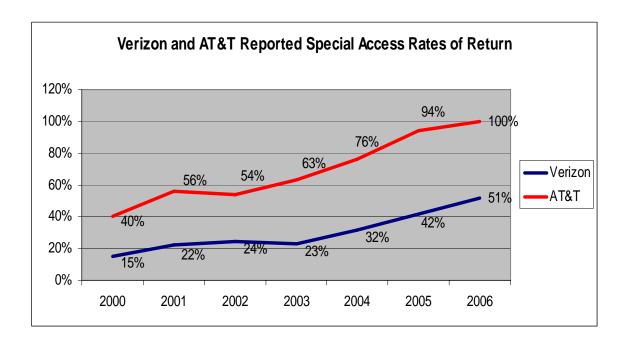
MONTHLY PRICES FOR SIMILAR CIRCUITS²¹



This dramatic difference in price for what is basically the same type of circuit (*i.e.*, a loop) is explained by the fact that the RBOCs face competition in the provision of retail DSL services (*e.g.*, cable modem), but face no competition at all for the vast majority of special access circuits that wireless carriers need to connect their cell sites.

That AT&T and Verizon possess monopoly power for the vast majority of cell site "back haul" facilities is further confirmed by the obscene profits they are making on these circuits:

AT&T's Elite and Verizon's Power Plan DSL plans are their higher priced plans and not the discounted "promotional plans" that are offered as low as \$15 per month for a limited period. Average DS1 special access price is based on month-to-month DS1 Channel Termination prices for Verizon, Bellsouth, and SBC states in pricing flexibility MSAs (*see* Ad Hoc Comments in WC Docket No. 05-25, Attachment C).



Indeed, evidence has already been submitted to the Commission demonstrating that RBOCs often charge higher prices in those markets deemed "competitive" and where as a result, they have been given the right to charge prices at will.²²

In summary, all evidence confirms that (a) RBOCs have monopoly power over the dedicated transport facilities wireless carriers need to connect to most of their cell sites, and (b) they are exercising that power by receiving monopoly rents for these bottleneck facilities.

AT&T's and Verizon's monopoly pricing of special access circuits is having a significant adverse affect on all wireless customers. For example, in the first quarter of 2007, more than 17

See, e.g., Special Access Rates for Price Cap LECs NPRM, 20 FCC Rcd at 2014 ¶ 59 (The old "AT&T also presents evidence purporting to show that current rates for special access services under the existing price cap plan generally are lower than rates established under a grant of pricing flexibility."); at 2018 ¶ 70 ("[P]arties have introduced evidence that the price cap LECs have not used this flexibility to lower special access rates in any MSA for which they have received Phase II pricing flexibility. Instead, these parties contend that the price cap LECs have either maintained or raised rates in each of these MSAs."); GAO Report 07-80 at 27-29 (Data show that prices for special access services in MSAs where phase II pricing flexibility has been granted are higher than the prices under the less-deregulatory phase I flexibility or under price caps).

percent of Sprint Nextel's cost of service was spent on special access circuits.²³ If these two RBOCs were to reduce their profit levels to the FCC authorized return of 11.25 percent (which itself is excessive given current market conditions), Sprint Nextel estimates that it would realize an annual cost savings of \$790 million (with other wireless carriers realizing similar savings).

A cost reduction of this magnitude – and it bear emphasis, *AT&T* and *Verizon* would still enjoy profits of 11.25 percent – would have enormous impact on wireless consumers. Importantly, competition among wireless carriers will ensure that the benefits of these price reductions are passed on to consumers – whether carriers accelerate network expansion to areas currently unserved or more quickly deploy new technologies or services such as wireless broadband services.

AT&T's and Verizon's monopoly pricing of special access circuits is also adversely affecting consumers by depressing the potential of intermodal competition. By forcing wireless carriers (including their own CMRS affiliates) to pay inflated prices for bottleneck facilities, AT&T's and Verizon's practices are having the effect of inhibiting the development of intermodal competition. This is because by overpricing production inputs needed by all CMRS providers, the RBOCs can effectively establish a price floor for independent wireless carriers who must pay cash for these bottleneck facilities. This makes it more difficult for independent wireless carriers to compete against the landline local exchange services that the RBOCs provide.

AT&T's and Verizon's monopoly pricing of special access circuits will likely have its most pernicious effect on the provision of wireless broadband services and the development of a

These data include the special access circuits used by Sprint Nextel's interexchange division. Sprint Nextel's cost of service includes such expenses as switches, cell sites, network engineering, and call termination costs. Sprint Nextel News Release, *Sprint Nextel Reports First Quarter 2007 Results*, Table No. 4 (May 2, 2007).

robustly competitive broadband market.²⁴ Sprint Nextel estimates that at service launch of its new 4G network, it will require a minimum of six DS1 circuits connected to each 4G cell site – as opposed to the two-to-three DS1 circuits used today to support 2G and 3G services. In other words, the cash outlays that Sprint Nextel will be required to pay AT&T and Verizon for special access facilities to 4G cell sites will likely increase, thereby enabling the RBOCs to enjoy even greater monopoly rents.²⁵ This fact will give the RBOCs even more market power to retard the ability of wireless broadband services to compete effectively with the RBOCs' own landline broadband services.

For these reasons, the Commission should (a) recognize the negative impact of the special access monopoly on the wireless industry; and (b) take necessary action to eliminate AT&T's and Verizon's control of that market and its resulting negative impacts on wireless competition and consumers.

B. AT&T's new "corporate policy" to increase Sprint Nextel's call termination costs and to generate new revenues for itself. A more recent indicator of AT&T's and Verizon's ability to negatively impact the competitiveness of the CMRS marketplace is AT&T's new "corporate policy" to increase other wireless carriers' cost of call termination. Historically, CMRS providers such as Cingular and Sprint Nextel have interconnected directly when traffic volumes in a market are large enough to make direct interconnection more cost effective than indirect interconnection (via an RBOC tandem switch). Direct interconnection, as well as the

See Testimony of Barry West, Chief Technology Officer and President, 4G Mobile Broadband, Sprint Nextel Corporation, Before the House Subcommittee on Telecommunications and the Internet, April 19, 2007.

With a need for six DS1s at each 4G cell site, it may be more economical to order DS3 circuits (each with a capacity equivalent to 28 DS1s). Nevertheless, the fact remains that for the vast majority of cell sites, only ILECs can economically provide DS3 circuits. *See* GAO Report 07-80 at 19-20 (In the areas GAO studied, competitive options are available at only 15% of the locations where there is a demand for a DS3 circuit).

associated bill-and-keep arrangements that most wireless carriers have developed, benefits wireless customers because each carrier realizes resulting cost savings in its recurring operating expense.

However, Cingular recently advised Sprint Nextel of a new AT&T "corporate policy" whereby Sprint Nextel will no longer be permitted to interconnect directly with it under specified circumstances. According to Cingular, under this new AT&T directive, Sprint Nextel must instead begin sending traffic destined to Cingular *via* AT&T tandem switches – in effect, introducing a new bottleneck in reaching Cingular's network. This new policy apparently will apply only in AT&T's "in-region" markets where it is an ILEC; Cingular presumably would remain free to interconnect directly with Sprint Nextel in AT&T's "out-of-region" markets.²⁶

This new AT&T corporate policy appears, at first blush, to be irrational. After all, the RBOCs for years have complained of congestion at their tandem switches and have encouraged the FCC to adopt rules requiring direct connections (and thereby avoiding tandem switches) when certain traffic thresholds are met.²⁷ Yet, the new AT&T corporate policy, if implemented, would needlessly add traffic to its tandem switches – in other words, needlessly increase the risk of tandem congestion. Moreover, the policy would undermine facilities redundancy that is so important to homeland security concerns.

On the other hand, AT&T's new corporate policy becomes understandable when viewed from a competitive market perspective. By requiring Sprint Nextel to send its Cingular traffic

Cingular has not told Sprint Nextel whether AT&T intends to apply the same policy to Cingular's traffic (*e.g.*, calls destined to AT&T landline customers must be routed though AT&T tandem switches regardless of traffic volumes to given AT&T end offices).

For example, under the AT&T-crafted Missoula Plan proposal, carriers would be required to use direct interconnection when traffic volumes reach a specified threshold. *See* Plan at 48 (§ III.C.7). *See also Unified Intercarrier Compensation NPRM*, 20 FCC Rcd 4685, 4742 ¶ 131 (2005); *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27079 ¶ 77, 27082 ¶ 86 (2003).

through AT&T tandems, AT&T can do two things concurrently: (1) generate additional transiting/transport revenues (with little or no incremental costs given its sunk investment in tandem switches); and (2) increase its competitor's cost of call termination (as Sprint Nextel would incur higher transport costs in delivering calls to Cingular's network *via* AT&T's tandems).

AT&T's new policy may be good for AT&T's shareholders, but the policy is not good for consumers or competition. It bears remembering that the RBOCs built their ubiquitous tandem switch network in a monopoly era (and as a condition for gaining their independence from the old "Ma Bell").²⁸ In other words, the RBOCs did not acquire their dominance over LATA tandem switches because of skill and acumen, but rather because they were the only game in town.

AT&T's new corporate policy is clearly anticompetitive, both in purpose and in effect. The policy is designed to generate new revenue for itself while increasing the service costs of its rivals – when more economical alternatives are available (and are being used) and when these alternatives would actually benefit AT&T (by reducing the volumes of traffic that flow through its tandem switches).

* * *

In conclusion, Sprint Nextel respectfully requests that the Commission consider in its next CMRS competition report the market power possessed by incumbent LECs and how the exercise of that power is harming consumers within the market for commercial mobile radio ser-

The AT&T divestiture decree required the BOCs to provide to IXCs switching "above the end office" in a LATA so competitive IXCs could have only one point of interconnection in each LATA. In response, the BOCs deployed new LATA tandem switches because AT&T kept most of its Class 4 toll switches, which the tandem switches effectively replaced. *See United States* v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd*, 460 U.S. 1001 (1983)(MFJ Order); *United States* v. *Western Electric*, 569 F. Supp. 990 (D.D.C. 1983)(Plan of Reorganization Order).

vices and inhibiting competition within the larger intermodal market for telecommunications and broadband information services.

Respectfully submitted,

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